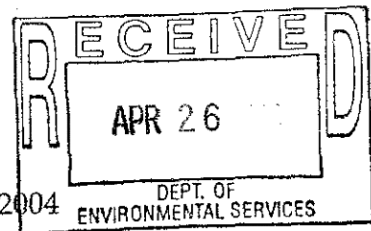


Working on Waste

April 26, 2004



Chair of the Air Resources Council
c/o DES, Air Resources Division
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
ATTN: ARC Council Clerk
Hand-Delivered

RECEIVED

APR 26 2004

Re: Air Resources Council Decision & Order, Docket No. 04-04
Motion for Reconsideration and Motion to Supplement Record

Dear Chair of the Air Resources Council,

On March 25, 2004, the Air Resources Council issued a Decision & Order regarding Working on Waste's (WOW) *Notice of Appeal*.

Enclosed are WOW's Motion for Reconsideration and Motion to Supplement Record.

Sincerely,

COPY
Katherine Lajoie
Katherine Lajoie for
Working on Waste
PO Box 641
Claremont, NH 03743

Enc.

Original and 15 copies hand-delivered to the Clerk's office, Air Resources Council

Copy to:

- Robert Scott, Director, Air Resources Division
- Robert Varney, Administrator, Region 1, EPA
- Ida Gagnon, Region 1, EPA
- Wheelabrator Claremont Company
- Scott Pope, Mayor, Claremont, NH
- James Phinizy, Chair, Sullivan County Delegation

**Working on Waste
Before the Air Resources Council
Docket No. 04-04**

**Motion for Reconsideration
Motion to Supplement Record**

Pursuant to Env-AC 208.01, Working on Waste (WOW) moves that the Air Resources Council (Council) reconsider its March 25, 2004 Decision & Order in Docket No. 04-04, Appeal of Working on Waste (Appeal). A copy of the Decision & Order is appended hereto.

WOW also moves that the Council accept into the record the appended statements signed by Appellants Helen Crowe, William Gallagher, Katherine (Katie) Lajoie, David Sussman, and John Tuthill. Appellants filed the Appeal collectively as Working on Waste.

Background

On January, 28, 2004, the New Hampshire Department of Environmental Services (DES) issued a Proposed Title V Operating Permit (Title V Permit) to Wheelabrator Claremont Company, L.P. A document titled Findings of Fact and Director's Decision (Findings and Decision) was issued with the permit and signed by Robert Scott, Director, Air Resources Division, DES. WOW appealed the permit decision on February 9, 2004. The Council dismissed the Appeal, citing WOW's failure to identify each person seeking relief and WOW's failure to demonstrate standing.

Persons Seeking Relief

Section Env-AC 206.03 of the Council's Procedural Rules describes the Notice of Appeal process:

- (a) Appeals shall be commenced by filing a notice of appeal as specified by this section with the council;
- (b) A notice of appeal shall include the following:
 - 1) A clear and concise statement of the relief sought and the statutory provision under which the relief is sought;
 - 2) The legal name of each person seeking the relief and the residence address and principal place of business of such person;
 - 3) A concise and explicit statement of the facts upon which the council is expected to rely in granting relief;
 - 4) A concise and explicit statement of the law which supports the requested relief; and
 - 5) A copy of the decision or order which is being appealed.
- (c) A notice of appeal may also include such other information as the appellant deems pertinent and relevant, including information such as exhibits, illustrations and sworn written testimony.

WOW is registered with the State of New Hampshire and is a "person" under state law. The Appeal states, page 1:

WOW is a citizens' initiative working to promote sustainable resource management in Sullivan County. Since 1985, WOW has participated in hearing and permitting activities associated with the Wheelabrator incinerator in Claremont. WOW is registered with the Charitable Trusts Unit, State of New Hampshire.

WOW does not have an office and therefore no "residence." That is why a PO Box was provided. As stated above, WOW's place of business is Sullivan County.

WOW did not list names and addresses of individuals when filing the appeal. WOW regrets this oversight and respectfully moves that the Council accept the information in the appended statements.

The Appeal complies with the other provisions of Env-AC 206.03 by providing:

- **A clear and concise statement of the relief sought and the statutory provision under which the relief is sought.**

The Appeal states, page 6: "The Air Resources Council should therefore reverse DES' decision." The relief is sought pursuant to RSA 125-C:12, III, as referenced in the Appeal, page 1. WOW asserts the Title V Permit "impedes the broad discussion necessary to move toward safe and equitable solid waste management in Sullivan County."

- **A concise and explicit statement of the facts upon which the council is expected to rely in granting relief.**

The Appeal, pages 1 through 6, references documents, correspondence, the NH Constitution, and RSA 125-C and provides the following information upon which the council is expected to rely in granting relief:

- ◇ The only factor considered for issuance of the Title V Permit is whether Wheelabrator complies with air emission standards. This focus ignores economic and social values that are protected under the NH Constitution, Bill of Rights, articles 1,2, 8, and 38.
- ◇ WOW raised these issues with DES in an August 8, 2003 letter to Michele Andy, Title V Permit Program Manager. Here WOW also reiterated a proposal presented at a public hearing on Wheelabrator's Title V permit in July 2003. The proposal calls for professionally facilitated stakeholder meetings to thoroughly assess incinerator impacts and safe alternatives. WOW's letter is appended to the Appeal.
- ◇ State Representative James Phinizy, in a letter to DES Commissioner Michael Nolin dated July 29, 2003, states that DES should not grant the Title V permit for the Wheelabrator incinerator in Claremont. Rep.

Phinizy also states it is "imperative" for DES to work with other public officials "towards the most sensible way in which this facility may be decommissioned in the shortest time possible." Rep. Phinizy's letter is appended to the Appeal.

◇ The Appeal references pages 8, 9, 10, 19, and 21 of the Findings and Decision signed by Director Scott. The Appeal also references pages 22-23, 32-35, and 52 of the Title V Permit. The Appeal discusses permit violations, DES' bias toward Wheelabrator's assessment of recycling in Sullivan County, DES' failure to give adequate consideration to waste management options that do not include incineration, and DES' failure to indicate how non-compliance with permit conditions would be determined and under what circumstances the permit would be revoked. The Appeal also notes that DES acknowledges that it is "essentially impossible to evaluate" the "cumulative toxic effects of the emissions of multiple pollutants and the long-term accumulation of persistent toxic pollutants."

◇ The Appeal references page 23 of the Director's Findings and Decision and notes DES' failure to address four issues raised in the air emissions report that WOW appended to the Appeal (Analysis of Air Emissions, Wheelabrator Claremont Company Incinerator, 1987-2002).

◇ The Appeal references RSA 125-C:1 and explains why the Title V Permit fails to comply with DES' statutory obligation to promote public health, welfare, and safety.

- **A concise and explicit statement of the law which supports the requested relief.**

The Appeal cites RSA 125-C:1 and the NH Constitution, Bill of Rights, articles 1, 2, 8, and 38.

- **A copy of the decision or order which is being appealed.**

WOW appended to the Appeal the Findings and Decision signed by Director Scott and dated January 28, 2004.

- **Additional information as the appellant deems pertinent and relevant.**

The Appeal, page 7, provides a list of enclosures.

Standing

The Appeal does not address the issue of standing for two reasons:

1. State statutes and Env-AC 200, Procedural Rules, do not delineate criteria for standing as construed by the Council's Decision & Order.
 2. Appellants, individually and also collectively as WOW, participated in the permitting process and therefore have standing under the Code of Federal Regulations 40 Part 70 (40 CFR Part 70).
-
1. **State Statutes and Env-AC 200, Procedural Rules, do not delineate criteria for standing as construed by the Council's Decision & Order.**

In issuing the Title V Permit, Director Scott states in the Findings and Decision, page 24:

Pursuant to New Hampshire Revised Statutes Annotated 125-C:12, III and Env-A 206.09, *Appeals*, any person aggrieved by this action may file a petition for appeal with the Air Resources Council which shall be received within 10 days of the date below. (Emphasis added)

RSA 125-C:12, III states "any person aggrieved by the decision of the commissioner granting or denying a permit application may within 10 days of the decision file an appeal with the air resources council. The air resources council shall hold a hearing on any such appeal promptly, and shall thereafter issue a decision upholding, modifying or abrogating the commissioner's decision." (Emphasis added)

RSA 21-O:11, IV, mandates the "the air resources council shall hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of air resources in accordance with RSA 21-O:14." (Emphasis added)

RSA 21-O:14, IV, states that the Council "may adopt rules under RSA 541-A to govern the conduct of administrative appeals under this section." The Council has adopted Env-AC 200, Procedural Rules.

Env-A 206.09 states that "any person aggrieved by the decision or failure to act may file a petition for appeal with the council. Such appeal shall be filed in accordance with the provisions of Env-AC 200."

Env-AC 201.01 states the Procedural Rules "shall govern the general procedures by which the air resources council conducts adjudicatory proceedings for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within its jurisdiction."

The above referenced statutes and the Procedural Rules covered under Env-AC 200 do not mention standing and therefore provide no guidance on how to establish standing as construed in the Council's Decision & Order. WOW cannot be faulted for failing to include in the Appeal information that is not explicitly requested under statutes and rules.

Under current law, Appellants have standing because the Council must "hear and decide all appeals." Appellants also have standing because they live close to the incinerator and have participated in the Title V permit process.

2. Appellants, individually and also collectively as WOW, participated in the permitting process and therefore have standing under the Code of Federal Regulations 40 Part 70 (40 CFR Part 70).

The cover page for the Title V Permit states that the permit "is issued by the New Hampshire Department of Environmental Services, Air Resources Division pursuant to its authority under New Hampshire RSA 125-C and in accordance with the provisions of Code of the Federal Regulations 40 Part 70" (40 CFR Part 70).

Under 40 CFR Part 70, section 70.4 (b) (3) (x), the State's Attorney General must provide a legal opinion that demonstrates adequate legal authority to:

Provide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7 (h) of this part, and any other person who could obtain judicial review of such actions under State laws.
(Emphasis added)

Filing an administrative appeal with the Council is a necessary step should one wish to seek judicial review in State court.

According to the Air Resources Division, the Title V permit process for the Wheelabrator incinerator began on June 6, 1996, when DES received

Wheelabrator's permit application.¹ The public record for the Title V Permit indicates the appellants participated in the permitting process, individually and also collectively as WOW:

- January 16, 1998: Letter from John Tuthill to the Air Resources Division, DES, regarding New Hampshire's State Implementation Plan;²
- July 30, 2002: Letter from WOW to Craig Wright, Air Resources Division, regarding the Title V permit application and its relationship to Wheelabrator's retrofit application;
- August 2, 2002: Letter from Katie Lajoie to Barbara Hoffman, DES, regarding New Hampshire's Proposed State Plan for Municipal Waste Combustion (enclosures included WOW press release and letter from former DES Commissioner Robert Varney to William Gallagher, WOW);
- August 19, 2002: Letter from Katie Lajoie to Robert Varney, Administrator, Environmental Protection Agency (EPA), and to DES Acting Commissioner G. Dana Bisbee, regarding New Hampshire's Proposed State Plan for Municipal Waste Combustion (enclosures included above referenced correspondence to Barbara Hoffman, DES);
- June 24, 2003: Mr. Gallagher, Ms. Lajoie, Mr. Tuthill, and Mr. Sussman provide oral comments at the public hearing for the incinerator retrofit and Title V permit;
- July 2003: WOW submits two documents to the public record for the Title V permit: Analysis of Air Emissions-Wheelabrator Claremont Company Incinerator 1987-2002, and Closing the Wheelabrator Incinerator in Claremont: A Blueprint for Public Officials & the People They Serve. Ms.

¹ Department of Environmental Services, Air Resources Division. Presentation by Michele Andy, Wheelabrator Claremont Title V Permit Public Hearing, July 29, 2003.

² Mr. Tuthill states on page 5:

I don't know how the Air Resources Division proposes to handle appeals of Division decisions regarding implementation and enforcement of this plan and the permitting of incinerators. I am however concerned that the Air Resources Council not adopt the stand recently taken by the Waste Management Council which has ruled that members of the public do not have standing to challenge decisions taken by the Waste Management Division. (Letter attached G. Bradley Richards to Tuthill, 12/30/97) I hope that EPA, when considering the proposed State Plan, will provide assurances that the public will not be prevented from filing appeals of Air Resources Division decisions, on the basis of a lack of standing.

Lajoie and Mr. Sussman were principal authors of the air emissions report, and Ms. Lajoie, Mr. Gallagher and Mr. Tuthill contributed to the blueprint for closure;

- July 29, 2003: Mr. Gallagher and Mr. Tuthill provide oral comments at the Title V public hearing. Ms. Crowe provides oral and written comments and Ms. Lajoie presents the closure plan;
- August 8, 2003: Letter from WOW to Michele Andy regarding the Title V permit application (letter appended to Appeal);
- January 15, 2004: Letter from WOW to Robert Scott, Director, Air Resources Division, regarding the Title V application and regarding WOW's proposal for professionally facilitated stakeholder meetings;
- February 9, 2004: WOW appeals the Title V Permit;
- March 10, 2004: Letter from WOW to Michele Andy, Air Resources Division, regarding the Title V Permit review by the EPA.

In addition, WOW wrote to Commissioner John Stephen, Department of Health and Human Services, on December 9, 2003 (signed by Mr. Sussman). WOW's air emissions report was enclosed.

The Appellants' involvement with the Title V permitting process for the Claremont incinerator goes well beyond a mere interest in the issue. In his July 29, 2003 letter to DES Commissioner Michael Nolin regarding the Claremont incinerator, State Representative James Phinizy states that "the only comprehensive research on the effects of the facility from a health standpoint has been done by the local citizens group, 'Working on Waste.' " It was WOW that proposed stakeholder meetings with a professional facilitator and WOW that encouraged DES' involvement with this process.


As stated in the Appeal, issuance of the Title V Permit "impedes the broad discussion necessary to move toward safe and equitable solid waste

management in Sullivan County." WOW has taken a leadership role in pushing for this broad discussion and in organizing committees to develop a solid waste plan for Sullivan County that does not include waste incineration. As such, Appellants have standing to appeal DES' decision to issue the Title V Permit.

WOW therefore moves that the Council:

- accept the statements appended hereto;
- acknowledge Appellants' and WOW's standing;
- promptly convene a hearing for the Appeal, pursuant to RSA 125-C:12, III.

Original and 15 copies respectfully submitted to the Air Resources Council on April 26, 2004.


Katherine Lajoie for Working on Waste

Enclosures:

- Decision & Order, Docket 04-04, Air Resources Council, March 25, 2004
- Statements from Appellants Helen Crowe, William Gallagher, Katherine Lajoie, David Sussman, John Tuthill

I certify that this document and the enclosures were mailed on April 26, 2004 by first class mail to:

- Robert Scott, Director, Air Resources Division
- Robert Varney, Administrator, Region 1, EPA
- Ida Gagnon, Region 1, EPA
- Wheelabrator Claremont Company
- Scott Pope, Mayor, Claremont, NH
- James Phinzy, Chair, Sullivan County Delegation


Katherine Lajoie for Working on Waste



The State of New Hampshire
Department of Environmental Services
Air Resources Council

PO Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Appeals Clerk Telephone (603) 271-6072 - TDD Access: Relay NH 1-800-735-2964
DES Website: www.des.nh.gov - Council Website: www.des.state.nh.us/councils/



March 25, 2004

Katie Lajoie ✓
Working on Waste
PO Box 641
Claremont, NH 03743

Re: Docket No. 04-04 ARC -- Working on Waste Appeal

Dear Ms. Lajoie:

Enclosed you will find the NH Air Resources Council's Decision & Order relative to the *Notice of Appeal*, which you filed with my office on February 9, 2004.

If you have any questions please contact me at (603) 271-6072 or by email at msclafani@des.state.nh.us

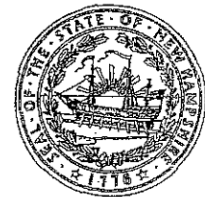
Sincerely,


Michael Scialfani, Appeals Clerk
NH Air Resources Council

cc: NH Air Resources Council
Michael P. Nolin, Commissioner, DES
Robert R. Scott, Director, DES Air Resources Division
Mark R. Harbaugh, DES Legal Unit
Gregory H. Smith, Esq.
Craig Wright, DES ARD



The State of New Hampshire
Department of Environmental Services
Air Resources Council



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DES Website: www.des.nh.gov - Council Website: www.des.state.nh.us/councils/

STATE OF NEW HAMPSHIRE
AIR RESOURCES COUNCIL

Decision & Order

Docket No. 04-04 ARC

Appeal of Working on Waste
In Re: Title V Permit No. TV-OP-050

Notice of Appeal

Background

On January 28, 2004, The NH Department of Environmental Services, Air Resources Division ("DES"), issued an approval of a Title V Operating Permit to Wheelabrator Claremont Company, L.P. located in Claremont, NH.

Pursuant to NHRSA 125-C:12, a person aggrieved by the decision of the commissioner granting or denying a permit application may within 10 days of the decision file an appeal with the Air Resources Council ("the Council").

Working on Waste ("WOW") is a self-described "Citizens' initiative working to promote sustainable resource management in Sullivan County."

On February 9, 2004, Ms. Katie Lajoie filed a Notice of Appeal with the Council on behalf of WOW ("Appellant"). In its appeal, the Appellants failed to provide any information relative to any member of WOW. The only address listed in the Notice of Appeal is a Post Office Box in Claremont, NH. The subject of the appeal is the Title V Operating Permit to Wheelabrator Claremont Company, L.P. located in Claremont, NH.

NH Code of Administrative Rules ENV-AC 206.03(b) specifies that a Notice of Appeal shall include, among other things, the legal name of each person seeking the relief and the residence address and principle place of business of such person.

Discussion / Conclusion

While several items required by NH Code of Administrative Rules ENV-AC 206.03(b) are deficient in the Appellants Notice of Appeal, in this decision, the Council directs its attention solely to the matter of the Appellants standing. In order for WOW to be granted standing before the Council, WOW must demonstrate that one or more of its members would have standing to bring an appeal before the Council independent of their representation by WOW. As noted above, the Appellants Notice of Appeal fails to identify *any* member of WOW, and as a result fails to prove standing before the Council. It is the burden of the Appellant to establish standing by its pleadings before the Council. The Council established in its June 18, 2001 Decision & Order relative to the appeal of Environmental Action of Northern New Hampshire (See Docket No. 2000-23 ARC), and upheld by the NH Supreme Court on appeal (See Case No. 2002-0035), "For a party to bring an appeal before the Council, the petitioning party must demonstrate a proper standing in order to bring about the proceeding. That is to say the burden is upon the petitioning party to show direct affectation to the petitioner as a result of a decision of DES. The subsequent burden is then to show that the decision being appealed is in some way unlawful or unreasonable. A party is not presumed to have standing in issues which only a generalized harm to the public is the primary basis to allege standing." (See Appeal of Richards, 134 N.H. 148 (1991)).

Order

Based on the reasons above, the NH Air Resources Council finds the Appellant lacks sufficient standing in this matter. The Council declines to rule on any other deficiencies or issues raised by the Notice of Appeal. The appeal is DISMISSED.

Reconsideration

Pursuant to Env-AC 2083.01 any party aggrieved by this decision may, within 30 days from the date of this decision, petition the NH Air Resources Council for reconsideration or rehearing.

So Ordered for the Council by:


Michael Scifani, Appeals Clerk

March 25, 2004

Helen Crowe

From: "Helen Crowe"
To: "Helen Crowe"
Sent: Sunday, April 25, 2004 1:13 PM
Subject: Fw: Title V

I am Helen L. Crowe and have resided at 10 Webster Avenue, Claremont, New Hampshire since October 7, 1987. My husband and I moved here after we retired. We had no idea that the same year we arrived, Wheelabrator's incinerator also arrived.

Having always been active in politics and activities everywhere we lived, I immediately became active here in Claremont. We like to be outdoors and as often as we can we hike and also do gardening. There are many times we do not feel it is safe to be outside. Also whenever we drive down Rt. 91 from West Lebanon, we can see the bad air hanging over the Claremont area. It generally is a dull yellow, while the sky further north is vivid blue.

Fortunately we live approximately three miles north of the Wheelabrator incinerator, so we only get the brunt of the contaminants that spew from the incinerator intermittently when the wind is right. Even so, we accumulate evidence of the fallout on the body of our house; especially on the windowsills, and it is noticeable on the snow in winter.

However, we have friends who live in a direct line of the prevailing winds that carry the excrements to their area constantly, and we are well aware that they have brought illnesses to the residents from the womb to old age, and even brought death starting with the very young up through all the ages. Many of these people have testified at hearings about their personal problems and even told us about the change in the health of birds and wild animals in their area!

When the cause of these afflictions became known, we in Sullivan County who have time to devote to the problems, began weekly meetings. As time went by, all the people became distraught, and five hundred people attended a protest meeting in the Claremont Opera House.

As hearings and meetings evolved, I became a Director opposing the Title V Operating Permit. I have spoken at the public meetings in 2003 and also attended two hearings in Concord.

As this should not be just a local problem, it should be considered a national problem, and this Title V permit should not be allowed.

Helen L. Crowe,

A large, stylized, handwritten word "COPY" in a bold, blocky font. Overlaid on the left side of the word is a handwritten signature that appears to read "Helen L. Crowe".

4/25/2004

Statement of William E. Gallagher

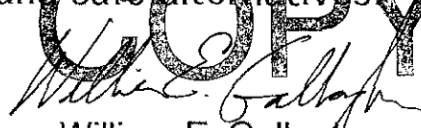
My name is William E. Gallagher. I live in Cornish, NH and I am a selectman there. I also represent the town of Cornish in the board of the Sullivan County Regional Refuse Disposal District. This district and the Southern Windsor/Windham Counties Solid Waste Management District in Vermont comprise the New Hampshire/Vermont Solid Waste Project. Each district has its own 20 year waste disposal contract with Wheelabrator. The contract expires in 2007.

I have participated in numerous conferences, lectures and workshops having to do with recycling, waste management and trash incineration. I was owner/operator of a commercial recycling business. In 2001, I served on the Governor's Task Force on Solid Waste and helped write its position statement.

I helped found Working on Waste (WOW) and have participated as a community and environmental advocate since 1985. WOW has been involved in many activities related to the permitting and operation of the Wheelabrator trash incinerator in Claremont and the ash landfill in Newport, NH.

I operate a farm in Cornish and live 10.6 miles of the incinerator. I have an organic garden and I graze cows.

I have played an active role in planning for a safe and equitable solid waste management plan for Sullivan County. I am an advocate for professionally facilitated stakeholder meetings to thoroughly assess incinerator impacts and safe alternatives.

COPY

William E. Gallagher - Director, WOW
April 26, 2004

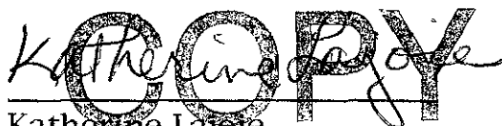
STATEMENT
Katherine (Katie) Lajoie

My name is Katherine (Katie) Lajoie. I reside at 429 Wheeler Rand Road in Charlestown, NH.

I have been involved with Working on Waste (WOW) since 1985, and I am presently listed as a Director for WOW as filed with the State of New Hampshire. I have participated in numerous hearings and meetings related to the Wheelabrator trash incinerator in Claremont and its impact on solid waste management in Sullivan County. I have studied pollution associated with waste incineration and was a principal contributor to the WOW report *Analysis of Air Emissions, Wheelabrator Claremont Company Incinerator, 1987-2002*. This report was submitted to the Air Resources Division in 2003 and appended to the WOW *Notice of Appeal* filed with the Air Resources Council in February 2004.

I am a public health nurse working in Sullivan, Coos, Grafton, and Cheshire counties. I provide case management services for lead poisoned children, including children in Claremont. I have a professional interest in children's exposure to lead and other toxic chemicals.

I live approximately 3.2 miles downwind from the Wheelabrator incinerator in Claremont and within the impact area for incinerator air emissions. I am also within sight and sound of a major transport route (Route 11/12) that provides truck traffic to the facility. My residence is approximately a quarter of a mile from this highway.



Katherine Lajoie
603-826-4803
April 26, 2004

David L. Sussman
1085 Borough Road
Charlestown, NH 03603
Tel. and fax: 603 826 5830
email: dls3@earthlink.net

Statement in regard to appeal of DES decision on Wheelabrator Title V Permit

I have been involved with Working on Waste (WOW) for approximately fifteen years and have been listed as a Director of this organization as filed with the State of New Hampshire for about the last five years.

During hearings held by the Public Utilities Commission in 2002 on plans to retrofit the Wheelabrator incinerator, I testified concerning a study and analysis of emissions data compiled by the Department of Environmental Services, Air Resources Division that was completed jointly with Katie Lajoie, the chair of WOW. This study was also the basis for testimony at the Title V hearings in Claremont in 2003. In each case the study was made part of the public record.

As an industrial engineering and business consultant, I have prepared over the years a number of studies and analyses of the financial impacts to community members of the NH/VT Solid Waste Project of electricity generation by the Wheelabrator incinerator.

Ms. Lajoie and I prepared a compilation of ground water contamination at the ash landfill operated by the Solid Waste Project from data on file at the Department of Environmental Services that ultimately contributed identification of leakages of contaminants and closure of the landfill.

My home is located in the northern part of Charlestown, New Hampshire, about three miles southeast (downwind) of the incinerator. As the plume of air pollutants emitted by the incinerator flows in this direction, my family and I are directly impacted by its dispersion.

Signed 
David L. Sussman

Date April 26, 2004

Now comes John G. Tuthill from the town of Acworth in Sullivan County, New Hampshire. I live at 44 Underwood Drive, formally known as the Old Charlestown Turnpike and on April 26, 2004, attest as follows:

I have lived in Acworth for 23 years. My wife and I cleared land and built our home near the upper reaches of the Cold River. It is a wild and relatively unspoiled area settled by colonists in the late eighteenth century. By the middle of the twentieth century Acworth's mills and farmland had been largely abandoned and the town's population had declined dramatically. Much of the land was reclaimed by woods. In recent years Acworth has been growing. A large part of the attraction is the rural character and the pristine environment remote from large towns and cities.

We raised two children here and my wife runs a small business from our home. We have gardens and woodland and spend much of our time working outdoors throughout the year. We both enjoy walking in the area and learning about the plants and inhabitants along the river, in the marshes and on the forested uplands. We have hosted numerous visitors interested in the local ecology over the years.

When the children were young we would sometimes fish in the river in the spring and summer. Since then we have learned that the fish may contain unhealthy levels of mercury. At times we would forage for wild foods: fiddlehead ferns and other wild greens, berries and mushrooms.

It was, and is important to us to live in an area where the impacts of pollution on the natural world are reduced to the greatest extent possible. It is my belief that in the state of New Hampshire this is mandated under the constitution and in statute and that we have a duty, collectively and individually, to protect our natural resources.

In 1986 I learned that a waste incinerator was being proposed in Claremont. Studying the issue I grew concerned about air emissions and the deposition of a host of pollutants on the land and waters of our region. It was clear, then as now, that there were methods of managing waste materials which were less damaging to the environment. I viewed waste incineration as posing unnecessary and unacceptable burdens on our local ecosystem and upon our family and the community at large.

Shortly thereafter I became aware of a citizens group called Working on Waste (W.O.W.) which was actively involved in the debate over waste incineration. While W.O.W. did not have a membership per se, there was a coalition of interested people working on issues relating to waste management and recycling and promoting safer alternatives for waste disposal than incineration.

Over the years I have worked with other concerned citizens on regulatory issues surrounding waste incineration and incinerator ash. Often these initiatives were organized under the auspices of W.O.W. I have also, since 1992, appeared before state regulatory appeal boards as an individual.

I have represented Acworth on the Sullivan County Regional Refuse Disposal District Committee for over ten years. From 1998-2000 I was a state representative and served on the House Environment and Agriculture Committee. I also participated in a committee formed by the Sullivan County Delegation to study the publicly owned landfill for Wheelabrator's incinerator ash in Newport, NH which was being considered for privatization at that time. Currently I am on the planning board in Acworth.

The largest single source of airborne mercury pollution in the county which I can identify is the waste-to-energy incinerator in Claremont N.H. The Wheelabrator incinerator is about 11.2 miles west-northwest from our home as the crow flies. Prevailing winds are from the west in this area.

It is my understanding that data provided by the NH Department of Environmental Services indicates that something in the vicinity of 2000 pounds of mercury may have been emitted by the Wheelabrator incinerator since it began operating in 1987. I have seen a report on mercury by the US Environmental Protection Agency published during the 1990s which indicates that as much of half of the mercury emissions from waste incineration fall out within fifty miles of the source. Furthermore there are studies on the chemistry of mercury pollution indicating that mercury emissions from waste combustion are more pernicious than from burning coal, for example.

It is out of concern for the ongoing damage to the local environment that I support W.O.W.'s appeal and motion for reconsideration. The council should hear the appeal and base a decision on the evidence presented and the merits of the case.

As I argued in a 1995 -1996 appeal of WCC's last air permit before this council, air emissions from the incinerator are unquantified and uncharacterized in real terms and while we cannot determine precisely the extent of environmental degradation, we can all agree that eliminating an unnecessary source of air pollution will result in an improvement of air quality and our quality of life.

Respectfully submitted,

COPY

4/26/04

John Tuthill, PO Box 49, Acworth, NH 03601 tel. (603) 863-6366